Before departing from the case we think it desirable to emphasize that what we have held to be inadmissible is not evidence of identification parades as such but only evidence of what happens at such parades in the presence of the police. The prohibition arises from the provisions of section 113 of the Criminal Procedure Code. Evidence relating to the conduct and statements of witnesses at an identification parade which consists of an accused person and a number of innocent persons of similar racial type can, however, be of very great value and if conducted by prison officials or indeed any persons of responsibility other than police officers evidence of what happens at such a parade is admissible under section 157 of the Evidence Ordinance, 1950 as corroborative of the evidence of any witness called at the trial.

Appeal allowed.

Solicitors: *Rajendra & Teik Ee.*

COMPTROLLER OF INCOME TAX v. R.S.T.

[A.C.J. (Tan Ah Tah J.) May 17, 1962]

[Singapore — Suit No. 428 of 1961]

Income Tax — Assessment — Notice of objection under Income Tax Ordinance (Cap. 166), s.76(2) — Plaintiff seeking further information under s.76(3) — Registrar signing final judgment in favour of plaintiff before finality reached — Appeal from Registrar's decision — Whether plaintiff can sue for income tax before assessment became final — Whether leave to defend should be given because triable issue raised — Whether income received by defendant was exempt from tax because it arose from sources outside Singapore.

This was an appeal from a decision of the Registrar under O.XIV of the R.S.C. giving plaintiff leave to sign final judgment for $303,555 being income tax due for the years of assessment 1951, 1952 and 1953 in accordance with the plaintiff's assessments dated 18.12.57, 4.12.58 and 15.12.59 and notice of demand dated 31.10.60. After receiving the notices of assessment the defendant lodged a notice of objection under section 76(2) of the Income Tax Ordinance. The plaintiff then requested further information under section 76(3) and before finality could be reached commenced the present action. It was argued, *inter alia*, for the defendant that (a) the right of the plaintiff to sue for income tax did not arise until assessments became final and conclusive; (b) the defendant should be given leave to defend the action because certain triable issues have been raised, one of them being whether sums on which tax is now claimed represent chargeable income which is taxable or capital assets not subject to taxation; (c) the income received by the defendant for the year of assessment 1951 was exempt from tax as it arose from sources outside Singapore and was received by the defendant while he was in Singapore for some temporary purpose.

Held: (1) the law on or after January 1, 1960, is that notwithstanding any objections or appeal against the assessment the tax shall be payable within the specified period. Sections 85 and 90 provide the plaintiff with a complete cause of action in this case;

(2) whether sums on which tax is claimed represent chargeable income which is taxable or capital assets not subject to taxation is a matter for the determination of the Board of Review;

(3) whether the income received by the defendant for the year of assessment, 1951 was exempt from tax was also a matter for the determination by the Board of Review.

Cases referred to:—

(1) *Commissioner of Taxation of the Commonwealth of Australia* v. *Cook* (1940), 1 A.I.T.R. 551.

(2) *A.B.C.* v. *The Comptroller of Income Tax*, [1959] M.L.J. 162.

APPEAL FROM THE REGISTRAR.

G. S. Hill for the plaintiff.

R. Ramani (*K. S. Chung* with him) for the defendant.

Cur. Adv. Vult.

Tan Ah Tah J.: This is an appeal from a decision of the Registrar, made under Order 14 of the Rules of the Supreme Court, giving the plaintiff leave to sign final judgment against the defendant for the sum of $303,555 and $231 for costs.

By a specially indorsed writ of summons which was issued on the 21st April, 1961 the plaintiff claimed from the defendant the sum of $333,555 being the amount of income tax alleged to be due and payable by the defendant. On the 10th August, 1961 part of the claim was withdrawn and the amount claimed was reduced to the sum of $303,555. The claim as it came before the Registrar was for income tax for the years of assessment 1951, 1952 and 1953 in accordance with the plaintiff's assessments dated respectively the 18th December, 1957, 4th December, 1958 and 15th December, 1959 and demand notes dated the 31st October, 1960.

It would appear that after receiving the notices of assessment the defendant lodged a notice of objection under section 76(2) of the Income Tax Ordinance (Cap. 166). In due course the plaintiff, acting under section 76(3) of the Ordinance, requested the defendant to furnish him with further information. Further correspondence and negotiations ensued but, before finality could be reached, and without issuing any notice of refusal to amend the assessments, the plaintiff commenced the present action. The reason why the plaintiff has acted as he has done does not appear on the record. This aspect of the matter was not discussed by counsel at the hearing and I propose to say no more on the point.

It was urged by counsel for the defendant that the right of the plaintiff to sue for payment of income tax did not arise until the assessments became final and conclusive. In considering this proposition it is necessary to refer to the law before the coming into operation of the Income Tax (Amendment) Ordinance, 1960. Before this Ordinance was enacted, section 85 of the Income Tax Ordinance provided as follows:

"Collection of tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance until such objection or appeal is determined:

Provided that the Comptroller may in any such case enforce payment of that portion of the tax, if any, which is not in dispute."

Section 85 of the Income Tax Ordinance was repealed by the Income Tax (Amendment) Ordinance, 1960 which came into operation on the 1st January, 1960. At the same time section 86 of the Income Tax Ordinance was also repealed by the amending Ordinance and the following section substituted therefor:

"86. Subject to the provisions of section 91 of this Ordinance, tax for any year of assessment levied in accordance with the provisions of section 42 or 43 of this Ordinance shall, notwithstanding any objection or appeal against the assessment on which such tax is levied, be payable at the place stated in the notice given under section 76 of this Ordinance within one month after the service of such notice:

Provided that —

(a) where collection of tax has remained in abeyance pending the determination of any objection or appeal against an assessment made prior to the 1st day of January, 1960, such tax shall be payable not later than the 1st day of September, 1960; and

(b) the Comptroller in his discretion may extend the time limit within which payment is to be made."

The law on and after the 1st January, 1960 is therefore that, notwithstanding any objection or appeal against the assessment, the tax shall be payable within the period specified. It is hardly necessary to add that in the present case this period has already elapsed.

It is provided by section 90 of the Income Tax Ordinance that tax and any penalty may be sued for and recovered in a court of competent jurisdiction by the plaintiff in his official name with full costs of suit from the person charged therewith as a debt due to the Crown.

It is clear, in my opinion, that sections 85 and 90 of the Income Tax Ordinance provide the plaintiff with a complete cause of action in this case. The tax has become payable, notwithstanding the objection which was lodged, and the plaintiff is empowered to sue for and recover payment thereof in this court.

In support of his argument counsel for the defendant referred to the provisions of section 84 of the Income Tax Ordinance, which provides as follows:

"84. Except as expressly provided in this Ordinance, where no valid notice of appeal has been lodged within the time limited by this Part against an assessment, or where an assessment has been determined on appeal, the assessment as made or agreed to under subsection (4) of section 76 of this Ordinance, or determined on appeal, as the case may be, shall be final and conclusive for the purposes of this Ordinance:

Provided that nothing in this section shall prevent the Comptroller from making any assessment or additional assessment under section 73 of this Ordinance, which does not involve re-opening any matter which has been determined on appeal."

It is plain that the object of section 84 is to determine the point of time at which an assessment becomes final and conclusive for the purposes of the Ordinance. This has nothing to do with the point of time at which tax levied under the relevant provisions of the Ordinance becomes payable. It is no novelty in the law of income tax that tax which has been assessed must in certain cases be paid although the assessment has not become final and conclusive. For example, section 64(10) of the English Income Tax Act, 1952, so far as is material, reads as follows:

"Notwithstanding that a case has been required to be stated or is pending before the High Court, tax shall be paid in accordance with the assessment of the Commissioners who have been required to state the case:"

A similar provision may be found in section 149(4) of the English Income Tax Act, 1918.

In Australia, too, section 201 of the Income Tax and Social Services Contribution Assessment Act, 1936-1959 provides as follows:

"201. The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the assessment the subject of the appeal or reference; and income tax may be recovered on the assessment as if no appeal or reference were pending."

In *Commissioner of Taxation of the Commonwealth of Australia* v. *Cook* [1], it was laid down by the High Court of Australia that a summons for final judgment, taken out in an action to recover Federal income tax, will not be adjourned on the ground that the defendant has instituted an appeal against the assessment in respect of such tax and, notwithstanding that such appeal is pending, liberty to enter judgment for the amount in question may be granted. It was submitted by counsel for the defendant that all that this case decided was that the fact that an appeal is pending affords no ground for granting an adjournment. In making this submission he appears to have overlooked the fact that, not only was the application for an adjournment refused, but liberty to enter judgment for the sum claimed was granted. The relevance of this decision to the present case is that it demonstrates that judgment may be entered against the taxpayer even though the assessment has not become final and conclusive. If the legislature chooses to make the tax become payable at an earlier stage it only means that, so long as he brings himself within the relevant section, the plaintiff is entitled to sue for and recover payment of the tax at that earlier stage.

It was contended by counsel for the defendant that certain triable issues had been raised and that therefore the defendant should have been given leave to defend this action. One of these issues was said to be whether or not the sums on which tax is now claimed represent chargeable income which is taxable or capital assets not subject to taxation. On this point it is sufficient to say that it is eminently a matter for the determination of the Board of Review which was constituted under the Income Tax Ordinance to determine, *inter alia*, questions of that very nature.

Another point raised on behalf of the defendant concerned the tax claimed for the year of assessment, 1951. It was said that if the amounts received by the defendant could be considered to be income, such income was exempt from tax as it arose from sources outside Singapore and was received by the defendant while

he was in Singapore for some temporary purpose. This again is a matter for the determination of the Board of Review.

As to the point raised by junior counsel for the defendant relating to the service or posting of the notices of assessment, it is not alleged in any of the affidavits filed by or on behalf of the defendant that there was any undue delay on the part of the plaintiff in the matter. In any event, it was decided in *A.B.C.* v. *The Comptroller of Income Tax* [2] that on the basis that the assessments in that case were valid, notices of assessment might be issued at any time.

I am satisfied that there is no question of fact or law which ought to be tried or argued in this case. The defendant has not shown that he has a fair case for defence or reasonable grounds for setting up a defence. There is in fact no arguable defence in this case. In my opinion the learned Registrar came to a correct decision in law. The appeal is accordingly dismissed and the plaintiff is to be at liberty to sign final judgment against the defendant for the sum of $303,555 and costs being the costs of the proceedings before the Registrar and of this appeal to be taxed.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Hilborne, Chung & Co.*

PUBLIC PROSECUTOR v. GOULD

[A.Cr.J. (Rose C.J.) May 27, 1962]

[Singapore — Magistrate's Appeal No. 47 of 1962]

Road traffic accident — Negligent driving — Information under s.30(1)(a) of the Road Traffic Ordinance (Cap. 227) — Admissibility of — Criminal Procedure Code (Cap. 232), s.121(5)(a).

Criminal Law and Procedure — Admissible evidence — Information to police under s.30(1)(a) — Road Traffic Ordinance (Cap. 227).

The respondent's motor-car struck a pedestrian and inflicted injuries from which the man died. The driver of the car did not stop after the accident but the car number was noticed by a taxi driver who was in the immediate vicinity of the accident. The respondent who was the registered owner of the car was questioned by the police but he declined to give particulars of the driver and the vehicle as required under section 30(1)(a) of the Road Traffic Ordinance. When his attention was drawn to the fact that if he failed to give the required information within seven days he would be guilty of an offence, the respondent admitted that he himself was the driver of the vehicle on the occasion in question. At his trial before a District Judge on a charge of causing the death of the pedestrian by a negligent act not amounting to culpable homicide, to wit, by driving a car negligently, the prosecution sought to put in evidence the admission made to a police officer by the respondent under section 30(1)(a) of the Road Traffic Ordinance. The learned District Judge ruled that such admission was inadmissible in evidence and as there was no other evidence before the court as to the identity of the driver of the vehicle in question, the respondent was acquitted and discharged. The Deputy Public Prosecutor appealed against the order of acquittal.

Held: (1) a charge of causing the death of a person by doing a negligent act not amounting to culpable homicide, to wit, by driving a motor-car negligently is a charge which relates to "an offence in connection with the driving of a motor-vehicle" within the meaning of subsection (2) of section 30 of the Road Traffic Ordinance;

(2) the fact that a police officer points out or brings to the attention of the respondent the provision of section 30(1)(a) of the Road Traffic Ordinance does not amount to a threat within the meaning of the proviso to section 121(5) of the Criminal Procedure Code as amended by the Criminal Procedure Code (Amendment) Ordinance, 1960, as the alleged threat is no more than the calling of the respondent's attention to a provision of the law with which it is his statutory duty to comply;

(3) information given to a police officer under section 30(1)(a) of the Road Traffic Ordinance is admissible in evidence at the hearing of a charge when such charge relates to any offence in connection with the driving of a motor-vehicle and it matters not whether the offence in question is under the Road Traffic Ordinance or under some other Ordinance, so long as the offence in question is "in connection with the driving of a motor-vehicle".

Cases referred to:—

(1) *Bingham* v. *Bruce* [1962] Cr. L.R. 114.

(2) *Hennell* v. *Cuthbert* [1962] Cr. L.R. 105.

MAGISTRATE'S APPEAL.

Abdul Wahab Ghows (Senior Crown Counsel) for the appellant.

N. A. Christopher for the respondent.

Cur. Adv. Vult.

Rose C.J.: This matter arises out of a road accident in which a motor car BD. 7604, the property of the respondent, struck a pedestrian in Upper Serangoon Road and inflicted injuries from which the man died.

The accident took place at about 11.25 p.m. on the 18th January, 1962.

The driver of the car did not stop after the accident but fortunately the number of the car was noticed by the driver of a motor taxi which was in the immediate vicinity of the accident.

The car was substantially damaged on the front nearside and in addition there were bloodstains on the damaged headlamp reflector on the nearside. This considerable damage would no doubt have become apparent if and when the driver examined the car upon his return home; and on the following morning the respondent went to the police station to report that there had been an occurrence in a street of which he did not know the name when he thought some object had been thrown at his motor-car.

It is not disputed by learned counsel for the respondent that it was the respondent (the registered owner) who was driving the car at the time of the accident, the whole matter upon which the respondent relies being the purely technical consideration that there was no admissible evidence before the District Judge that the respondent was in fact the driver of the car.

It was upon this ground that the learned District Judge held that there was no case to answer and acquitted the respondent.